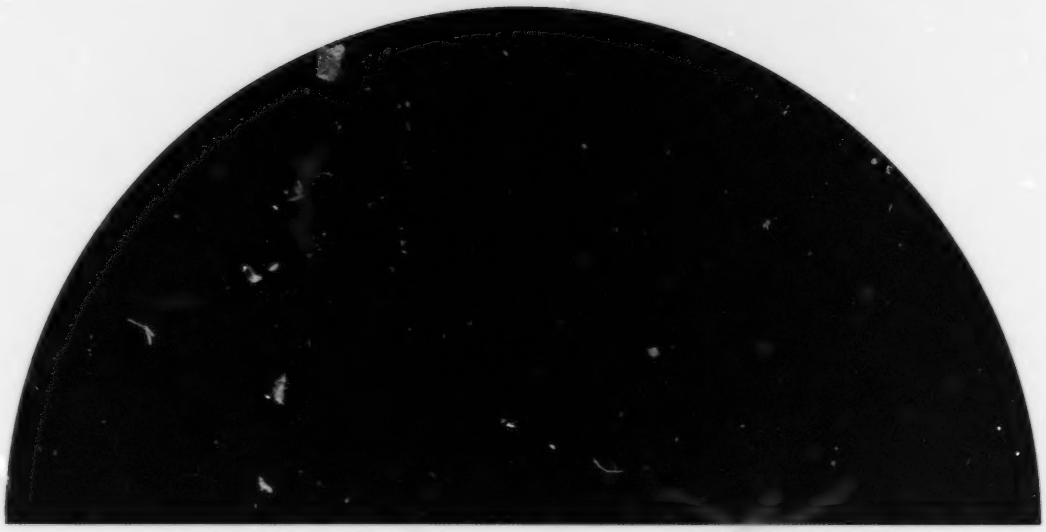
Environment Canada Environnement Canada

DRAFT
ENFORCEMENT AND COMPLIANCE POLICY
FOR DISCUSSION

SPRING 1987



Canadian Environmental Protection Act

Canada

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ENFORCEMENT AND COMPLIANCE POLICY

FOR DISCUSSION

CANADIAN ENVIRONMENTAL PROTECTION ACT

SPRING 1987

Aussi disponible en français

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INTRODUCTION

Good laws and regulations are the basic ingredients that Canadians ask their government to provide in order to protect them and their society. But good legislation can't "just sit on the books". It must be effectively enforced.

Under the *Constitution Act*, both the federal and provincial governments have concurrent and legitimate responsibilities to protect the environment. The federal-provincial agreements provided under the *Canadian Environmental Protection Act* for administration of the new legislation are important for definition of the roles of both levels of government. An essential element of the agreements will be a clearly articulated Enforcement and Compliance Policy. Such a policy is needed to ensure that the law is applied in a fair, predictable and consistent manner nation-wide.

That is why a Draft Enforcement and Compliance Policy has been prepared and is being released now for public consultation. The draft policy presented in the following pages tells everyone who shares a responsibility for the environment -- governments, industry, organized labour and individuals -- what is expected of them. And it also lets everyone know what to expect from Environment Canada.

The draft policy touches all segments of Canadian society, including private citizens. Individuals will have a greater role than ever before in the enforcement of a federal law, since the new *Canadian Environmental Protection Act* requires the Minister of Environment to investigate an alleged offence upon receipt of a petition to do so from 12 or more individuals, and the Draft Enforcement and Compliance Policy encourages Canadians to report suspected violations of the Act.

While the draft policy does not enumerate increased resources assigned to enforcement of the *Canadian Environmental Protection Act*, they have been requested. Details are not yet worked out with the federal Treasury Board, but Environment Canada and the Department of National Health and Welfare will receive additional resources to fulfill their obligations under the Act for assessment of substances. In addition, Environment Canada and the federal Department of Justice will receive increased resources to improve their capability in the area of enforcement.

Comments, suggestions and criticism on the Draft Enforcement and Compliance Policy received from the date of the document's release until the close of the consultation period on October 31, 1987 are welcome from all interested parties and will be invaluable in shaping the final policy.

Please write to: Enforcement and Compliance Policy.
Environment Protection
Environment Canada
Ottawa, Ontario K1A 0H3

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CHAPTER I

GUIDING PRINCIPLES

These general principles govern the application of the *Canadian Environmental Protection Act*.

- Compliance with the Act and its regulations is mandatory.
- Enforcement officials will apply the Act with an emphasis on prevention of damage to the environment. Serious violations will be subject to the full force of the law to ensure the protection of the environment and human health.
- Enforcement officials will examine every suspected violation and will take action consistent with this policy. Where an infraction meets the criteria for prosecution or other court-related action under this policy, enforcement officials will pursue such litigative action.
- Enforcement officials will apply the Act in a manner that is fair and consistent.
- They will use rules, sanctions and processes securely founded in law, in keeping with the *Canadian Charter of Rights and Freedoms* and following the Citizens' Code of Regulatory Fairness.
- Enforcement officials will respond to violations in a manner proportionate to the nature and gravity of the offence.
- In applying the Act, the federal government will ensure that the objectives of the legislation are met, while using measures that are cost-effective to the taxpayer.
- Canadians are encouraged to report suspected violations of the *Canadian Environmental Protection Act*.
- Environmental quality objectives and environmental protection guidelines and codes, as well as regulations under the Act will be developed in concert with the provinces and with input from both those who will be regulated and those who will benefit from such policy instruments. This is in keeping with the Citizens' Code of Regulatory Fairness.
- The federal government will use education and information as preventive tools to achieve compliance with the Act.
- In order to ensure consistency of enforcement across Canada, the Enforcement and Compliance Policy will be a major feature of the administrative

agreements to be negotiated with provincial governments*. The agreements will spell out procedures for audit and evaluation of enforcement and compliance activities.

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* Although reference is made to "provincial governments", it should be understood that the reference throughout is intended to apply as well, where appropriate, to territorial governments and/or to the Department of Indian Affairs and Northern Development.

CHAPTER II

THE ROLE OF ENVIRONMENT CANADA IN PROMOTING COMPLIANCE

1. Education and Information
2. Technical Assistance
3. Liaison
4. Regulation Development and Review
5. Environmental Quality Objectives, Guidelines and Codes of Practice
6. Advice from Inspectors and Other Officials
7. Environmental Audits

1. Education and Information

Environment Canada will distribute, upon request:

a. copies of the *Canadian Environmental Protection Act* and its regulations;

b. the Enforcement and Compliance Policy for the *Canadian Environmental Protection Act*;

c. bulletins on enforcement and compliance procedures;

d. a registry of court actions, such as:

(i) court injunctions, indicating the action required under the injunction, and the time schedule to complete the action;

(ii) convictions under the Act, indicating the nature of the offence and the sentence imposed by the court;

(iii) court orders following conviction for an offence under the Act;

(iv) civil suits instituted by the federal government, such as those to recover reasonable costs of cleanup or those incurred to remedy damage to the environment; and

(v) forfeitures under the Act.

e. orders issued by the Minister under the Act, indicating the action required, and the time schedule to complete the action;

f. case law related to the *Canadian Environmental Protection Act* as precedents are established;

g. public notice of Compliance Guarantees, signed by the Minister and an individual or company; and

h. state of the Canadian environment reports, fact sheets and pamphlets on subjects such as the importance of environmental protection and the interdependence of the economy and the environment, and reports on the effectiveness of controls under the *Canadian Environmental Protection Act*.

2. Technical Assistance

Environment Canada will co-operate with industry, with other federal agencies and with the provinces and territories in the development of technology. The development of technology will be primarily directed towards preventing or reducing the release into the environment of substances covered by the Act and towards ensuring appropriate disposal of these substances.

3. Liaison

Recognizing the special partnership between the federal government and the provinces, the *Canadian Environmental Protection Act* allows creation of federal-provincial committees to advise on the exercise of certain provisions of the Act. In addition, Environment Canada will meet at regular intervals with industry, with environmental groups and with other interested parties, so that information and concerns about the Act and about enforcement and compliance practices can be exchanged.

Environment Canada will enter into agreements with other federal departments and agencies to ensure that activities under the *Canadian Environmental Protection Act* take fully into account the responsibilities of those departments and agencies and that those same agencies administer their responsibilities in a manner consistent with the objectives of the Act.

4. Regulation Development and Review

An annual regulatory agenda will be published reflecting the priorities reached in federal-provincial consultations. When existing regulations are being reviewed and when new regulations are being developed, Environment Canada will consult with other federal departments, provincial governments, industry and other interested parties.

5. Environmental Quality Objectives, Guidelines and Codes of Practice

Environment Canada will develop environmental quality objectives as well as guidelines and environmental codes of practice using a process of consultation with interested parties. Texts will be published and distributed upon request. These documents will assist industry, the provincial governments and municipalities in improving the quality of the Canadian environment.

6. Advice from Inspectors and Other Officials

In keeping with the emphasis on prevention of harm or damage to the environment, officials may review options for preventive and corrective action with industry as well as with provincial and municipal governments.

7. Environmental Audits

The federal government will encourage effective environmental audit.

An environmental audit is an examination of management practices to ensure that an industrial or other facility meets environmental requirements. Audits can also be designed to evaluate the effectiveness of environmental management systems already in place or to assess the risk from regulated or unregulated substances and practices. The audit is an internal review by the individual or company or by its agent. It is not to be confused with a compliance audit undertaken by government in its role as regulator.

Environmental audits can help managers of industrial, federal, provincial, or municipal facilities, to:

- develop environmental policies and programs that implement regulatory requirements;
- develop procedures to control environmental hazards not specifically covered by the Act or regulations;
- train and motivate facility personnel to work in an environmentally acceptable manner and to comply with government regulations and the facility's own environmental policies;

- require third parties working for, with or on behalf of the organization to follow its environmental practices; and

- institute preventive and corrective procedures to minimize actual and potential environmental harm.

Industry and others that use environmental audits will be encouraged to take the initiative to translate the preventive and corrective procedures identified through environmental audits into formal Compliance Guarantees.

Environmental audits will not be used as the sole basis for orders by the Minister, applications for search warrants, injunctions or prosecutions, but may be used either by the defence or prosecutor as evidence in any litigative action.

CHAPTER III

RESPONSES TO VIOLATIONS OF THE CANADIAN ENVIRONMENTAL PROTECTION ACT

1. Authorities responsible for Implementation of the Act
2. Role of Inspectors
3. Inspection and Investigation
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5. Enforcement Actions
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   - H. Penalties and Court Orders upon Conviction
   - I. Recovery of Cleanup Costs by the Federal Government by means of a Civil Suit

1. Authorities responsible for Implementation of the Act

Minister of Environment - The Minister of Environment has responsibility for the administration of the *Canadian Environmental Protection Act*. The Minister must act in accordance with the legislation and is accountable to Parliament for his or her actions.

Minister of National Health and Welfare - Under the Act, the Minister of National Health and Welfare provides advice in relation to human health aspects and jointly recommends regulatory actions, but has no enforcement responsibility.

Enforcement Officials - Enforcement officials are individuals designated as inspectors under the *Canadian Environmental Protection Act* and other government employees who are assigned responsibility to ensure that the legislation is enforced. The specific powers of inspectors are set out in the legislation. Enforcement decisions by officials will be made in accordance with the principles and guidelines of this policy. Some inspectors may also specialize in the investigation of offences.

Attorney General and Officials of the Attorney General - The Attorney General has responsibility for all litigation relating to the Act. While enforcement officials may recommend prosecution proceedings or recommend other types of litigative action such as injunctions or recovery of cleanup costs through civil suit, the ultimate decision on how to proceed with such litigation rests with the Attorney General, or the Crown prosecutor who acts as the agent of the Attorney General.

Courts - The courts make the final decisions regarding convictions under the *Canadian Environmental Protection Act* including what penalty to impose or what remedy to order.

2. Role of Inspectors

Inspectors under the Act have four basic roles in which they can:

- provide information and advice regarding compliance with the law;
- carry out inspections to ensure compliance with the law;
- conduct investigations to obtain evidence of violations. An investigation may lead to prosecution or other court-related actions; and
- direct that corrective measures be taken in an emergency, where there is a danger to human life, to health or to the environment.

Although some inspectors may specialize in the investigation of offences, most inspectors are trained to carry out any of the four roles described above. To ensure fairness, an inspector will signal the role he or she is taking by indicating, at the outset, the purpose of any contact. If, during a contact, an inspector must shift to the investigative role or, in an emergency, to the function of causing or directing action to be taken, the inspector will indicate the different role that he or she is taking to the individual or company.

3. Inspection and Investigation

There is a distinct separation between an inspector's authority to conduct inspections and the inspector's authority to carry out investigations of offences. To conduct an inspection, the inspector must believe that an activity or substance on the premises is subject to legislative controls and to routine inspections under the *Canadian Environmental Protection Act*. There are two instances in which the inspector will conduct an investigation:

(i) when he or she has reasonable grounds to believe that an offence has been committed under the Act;

(ii) or when the inspector is investigating an alleged offence after presentation to the Minister of a petition duly signed by 12 or more individuals who provide a statutory declaration giving information about an alleged violation.

A. Inspection

Under the *Canadian Environmental Protection Act*, an inspector may enter and inspect any place, other than a private dwelling, when:

- the inspector has reasonable grounds to believe that there is an activity, material, substance, records, books, electronic data or other documents that are subject to the Act or relevant to its administration.

The inspector may examine substances and products, open and examine receptacles, containers or packages and take samples. The inspector may also examine books, records or electronic data and make copies of them.

In the case of a private dwelling, the inspector must obtain the consent of the occupant or a search warrant from a justice, in order to carry out inspection.

B. Inspection Program

There will be a planned program of regular inspections including spot checks. The frequency of inspections will be determined by the risk to the environment or to human health and the compliance record of the individual or company.

If information or complaints have been brought to the attention of enforcement officials, regular inspections will be supplemented by additional inspections, as required. In addition, enforcement officials will develop a special inspection schedule when companies undertake expansion or alteration of a process. As well, inspection schedules will be established to verify adherence to warnings, to Compliance Guarantees, to orders by the Minister, and to court orders issued upon conviction of an offender.

C. Investigation

An investigation involves gathering, from a variety of sources, evidence and information relevant to a suspected violation. A search is a component of an investigation, and the search power may be used by inspectors when fulfilling their duties under the Act.

a. Search Warrants

An inspector will request a search warrant from a justice of the peace when the inspector has reasonable grounds to believe that a specific violation of the Act has been committed by an individual or company and the inspector wishes to enter premises, including a private dwelling, to gather evidence for a criminal action. Evidence may be a sample of a substance, a product, bills of lading, proof of purchase or sales, results of tests such as tests of emissions from smokestacks, etc. The inspector will not have to exercise his or her authority under the search warrant if the individual or company consents to the search.

An inspector does not require a search warrant in urgent circumstances. Those circumstances include situations where the delay necessary to obtain the warrant would result in danger to human life or the environment or the risk of the loss or destruction of evidence.

b. Seizure and Detention

During the course of an inspection or a search with or without warrant, inspectors may seize and keep anything which they reasonably believe was used to commit an offence under the Act, is related to the commission of an offence or will provide evidence of an offence.

Inspectors will use their powers of seizure and detention, when they believe that the seizure is necessary and in the public interest. Reasons for seizure and detention may include:

- the need to take possession of a substance, equipment or any other thing to prevent danger to the environment, human life or health;

- the need to prevent distribution, in Canadian commerce, of a prohibited substance or products containing a prohibited substance or of chemicals new to Canada for which the required information has not been provided to the Minister under the Act;

- the need to prevent export of a substance for which notice of export to the receiving country is required, when that notice has not been provided to the receiving country or to the Minister within the prescribed time;

- the need to prevent further violation of the Act; or

- the need to prevent loss of evidence or its destruction.

For any of these reasons, the inspector may also move the seized substance, product, equipment or thing to a secure location.

4. Criteria for making Decisions on Responses to Violations

Whenever a violation of the Act is discovered, enforcement officials will consider the following factors when deciding which enforcement action to take:

- **Nature of the violation** - This includes consideration of the seriousness of the harm or potential harm, intent, whether this is a repeated occurrence, and whether there are attempts to conceal information or otherwise subvert the objectives and requirements of the *Canadian Environmental Protection Act.*

- **Effectiveness in achieving the desired result with the violator** - The desired result is compliance with the Act, within the shortest possible time, and with no further occurrence of violation, in order to ensure both compliance and protection of the environment. Factors to be considered include the violator's history of compliance, willingness to co-operate, evidence of corrective action already taken, past experience in achieving compliance through use of particular enforcement actions and the existence of other administrative or court-related actions by other federal, provincial or territorial authorities.

- **Effectiveness in generally promoting compliance by others**

- **Cost-effectiveness of alternative procedures.**

5. Enforcement Actions

Under the Act, the following actions are available to enforcement officials:

A. Warnings
B. Compliance Guarantees
C. Orders by the Minister
D. Directions by Inspectors
E. Ticketing
F. Injunctions
G. Prosecution
H. Penalties and court orders upon conviction
I. Recovery of cleanup costs by the federal government by means of a civil suit.

A. Warnings

Inspectors may use warnings:

- when they believe that a violation of the Act has occurred or is continuing to occur; and
- when the degree of harm or potential harm to the environment, human life or health appears to be minimal.

When deciding whether to use warnings or more severe enforcement actions, inspectors may also consider:

- whether the individual or company has a history of good compliance with the Act; and
- whether the individual or company has made reasonable efforts to remedy or mitigate the consequences of the offence or further offences.

Warnings will always be given in writing. When absolutely necessary, however, inspectors may initially give a warning orally. This is to be followed as soon as possible by a written warning.

The written warning will contain the following information: the section of the Act or regulations involved; a description of the alleged offence; if appropriate, a time limit within which the person or company must comply with the warning; the statement that if the warning is not heeded, enforcement officials will take further action.

B. Compliance Guarantees

A Compliance Guarantee is a written commitment to compliance made by an individual or company that has failed to meet a requirement of the *Canadian Environmental Protection Act*. The objective of the Guarantee is to ensure compliance with the Act and to prevent repetition of the offence.

A Compliance Guarantee will contain technical details of what measures the individual or company will be required to undertake to attain or to ensure continued compliance. Enforcement officials and the company will negotiate its terms.

When enforcement officials are deciding whether or not to accept a Compliance Guarantee from an individual or company, they will take the following into account:

- whether the degree of harm or potential harm to the environment, to human life or to health appears to be minimal;
- whether the individual or company has a history of good compliance with the Act;
- whether the individual or company has co-operated fully with enforcement officials;
- whether the individual or company has made reasonable efforts to remedy or mitigate the consequences or possible consequences of the offence or future offences;
- whether court-related action is necessary as a general or particular deterrent.

The Compliance Guarantee will contain a general promise of future compliance with the Act. It will also list the corrective measures that are to be undertaken by an individual or company to bring the individual or company into compliance with the Act and stipulate the dates by which these measures are to be instituted. These measures could include such things as the putting in place of technology to prevent unauthorized releases of substances and the establishment of monitoring programs. The existing of a recent environmental audit could be extremely useful in the development of Compliance Guarantees.

The Compliance Guarantee will also contain a condition requiring regular reporting by the individual or company to the Minister or the Minister's representative on the progress achieved in implementing any of the measures listed above.

Compliance Guarantees will be public documents, and notice will be given when they are established.

In general, Compliance Guarantees cannot be renewed. When there is a failure to comply with a Compliance Guarantee, enforcement officials will gather the appropriate evidence and recommend that the Attorney General undertake the necessary litigative action.

C. Orders by the Minister

The Minister may issue three types of order under the Act:

a. orders prohibiting activities involving new substances that have been manufactured in or imported into Canada in contravention of the Act;

b. emergency orders to take immediate action to reduce the danger that a substance presents to the environment or human life or health; and

c. orders directing remedial measures.

The Minister will issue such orders only when any or all of the following circumstances exist:

- there is reason to believe that the individual or company will not need a request from the Minister to take necessary action, without a formal order;
- the individual or company has a history of violations of the Act;
- the degree of risk or harm to the environment, human life or health, posed by the substance is significant.

(a) Orders for substances new to Canadian commerce

The Minister is empowered to issue an order prohibiting an activity involving a substance new to Canadian commerce, when he or she has reasonable grounds to believe that the substance has been manufactured in or imported into Canada in violation of the Act. The order can prohibit any activity involving the substance and would remain in effect until the expiry of the period for assessing the new compound.

(b) Emergency orders

Where a substance believed by the Minister of Environment and the Minister of National Health and Welfare to be toxic presents an immediate and significant danger to the environment, human life or health, the Minister of Environment may issue an emergency order. Such an order may re-

quire consultation with the provinces to determine whether they might more effectively address the situation.

An emergency order can be used when the substance is not listed as a regulated substance on Schedule I under the Act, or when it is listed but both Ministers believe that additional regulatory controls are required. The order can direct the person or company owning or having the control or management of the substance to take the necessary measures to reduce danger to the environment, human life or health. The Minister of Environment may make these orders to control any aspect of the life cycle of a toxic substance that the Governor in Council can control by regulation.

(c) Orders for remedial measures

Orders directing remedial measures may be issued by the Minister of Environment to manufacturers, processors, importers, distributors or retailers, where there is a contravention of the provisions of the Act governing toxic substances or any regulations made under those provisions.

This type of order may direct an individual or company to do any or all of the following:

- give public notice of any danger to the environment, human life or health;
- mail this notice to every manufacturer, distributor and retailer of the substance or product as well as to every person to whom the substance or product is known to have been delivered or sold;
- replace the substance or product by one that does not pose a danger to the environment, human life, or health;
- accept the return of the substance or product and reimburse the purchase price to the purchaser;
- undertake any other measures appropriate for the protection of the environment or human life or health.

Failure to comply with any of the three types of ministerial order will lead a recommendation by enforcement officials that the Attorney General prosecute for failure to comply.

D. Directions by Inspectors

Where there is a release of a substance in contravention of regulations under the Act, an inspector may give directions to the person or company that owns the substance or that has or had the charge, management, or con-

trol of the substance at the relevant time, to take all reasonable measures to remedy the situation.

As the Act already imposes on persons or companies the obligation to take such measures, an inspector will not ordinarily issue such directions, unless the individual or firm is not meeting its obligations. The directions will be given in writing, but, during the initial response to an emergency, directions may be given orally and later confirmed in writing. Failure to comply with a direction by an inspector will lead to a recommendation by enforcement officials that the Attorney General prosecute for the refusal to comply.

E. Ticketing

Inspectors appointed under the *Canadian Environmental Protection Act* have authority to issue tickets for the procedural and administrative violations that are described in the regulations on ticketing* made under the Act. Tickets will be issued in every case except when the inspector deems a warning to be appropriate or the ticketing regulations specify prosecution for a repeated infraction.

Upon being issued a ticket, the accused may:

- plead guilty and pay the fine to the appropriate court as prescribed on the ticket without making a formal court appearance;
- plead guilty with an explanation and appear in court to request a lesser fine or additional time for payment or both;
- submit a plea of not guilty.

If the accused fails to choose an option within the stated time limit, he or she has waived the right to challenge the ticket. An automatic guilty plea is entered against the accused. The Crown can then register the conviction and begin civil proceedings to collect the outstanding fine.

F. Injunctions

Under the *Canadian Environmental Protection Act*, the Minister may ask the court for an injunction, in order to stop a violation of the legislation. The Minister will request an injunction when other remedies in the Act

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* The ticketing regulations including the delineation of exact offences and associated fines are not yet developed. The principles of ticketing regulations as well as the types of offences a fines will be available by September 1987.

have been exhausted or are unlikely to address the problem in a timely fashion, as dictated by the nature of the offence or potential offence.

Under the Act, a private citizen who suffers or is about to suffer loss or damage as a result of a violation under the legislation or its regulations may also seek a court injunction. The injunction would order the person or company to refrain from any conduct that the court considers causes or would cause the loss or damage.

G. Prosecution

Enforcement officials will recommend prosecution proceedings for every violation of the *Canadian Environmental Protection Act* **except** where a warning, a Compliance Guarantee, or a ministerial order is more appropriate, or where the violation is adequately dealt with by ticketing.

However, there are circumstances under which enforcement officials **will always** recomend prosecution proceedings. These are where:

- there is a death of a person;
- there is serious harm or risk to the environment, human life, and health;
- there is fraud;
- there is deliberate violation;
- the alleged violator did not take all reasonable measures to avoid the violation before the fact;
- the history of compliance of the alleged violator indicates that he or she might repeat the offence;
- the alleged violator obstructed the inspector in the carrying out of the inspector's duties and responsibilities under the Act;
- the alleged violator concealed or attempted to conceal information after the offence occurred;
- the alleged violator did not take all reasonable measures to comply with a ministerial order or with a direction by an inspector;
- the alleged violator interfered with a substance seized by an inspector under the Act;

- the deterrent effect of prosecution on the alleged violator and other regulatees is high or;

- a person or company convicted of an offence has not complied with a court order.

The Act stipulates that certain offences are to be prosecuted by summary conviction and others, by way of indictment. Other offences under the Act may be prosecuted by either means. In cases where prosecution can take place by either means, it is up to the Crown prosecutor to decide whether to prosecute by way of summary conviction or by way of indictment.

Under the Act, the Crown prosecutor is **required** to proceed by indictment where the alleged violation has resulted in the death of or serious harm to a person or the risk of these situations, or the loss of the use of the environment due to a disaster caused by knowing, negligent or reckless activity.

Enforcement officials will request that the Crown Prosecutor **always** consider indictment where there is perpetration of a fraud.

H. Penalties and Court Orders upon Conviction

Upon conviction of an offender for a violation of the *Canadian Environmental Protection Act*, enforcement officials will, on behalf of the Minister, recommend that Crown prosecutors request penalties (e.g. fines or imprisonment or both, as provided under the Act) that are proportionate to the nature and gravity of the offence.

When making a recommendation with respect to sentencing, enforcement officials will apply the following criteria: the nature of the violation; effectiveness of the recommended penalty in achieving the desired result with the violator (i.e. compliance with the Act and no further occurrence of violation); and effectiveness of the recommended penalty in promoting compliance generally (general deterrence).

When a person has been convicted of an offence under the Act, enforcement officials may request that, in sentencing, the courts include orders such as those that:

a) prohibit the offender from doing any activity that may result in continuation or repetition of the offence;

b) direct the offender to correct resulting harm to the environment or to take measures to avoid potential harm;

c) direct the offender to notify, at his or her own expense, any person adversely affected by the offender's infraction of the Act;

d) direct the offender to publish the facts relating to the offence;

e) direct the offender to perform community service;

f) direct the offender to compensate the Minister of Environment for the costs of investigation and prosecution of the offence and for any corrective or preventive measures (including cleanup) taken by the Minister as a result of the infraction.

Enforcement officials will request orders of type a), when there is likelihood of the offence being repeated by the offender. Type b) court orders will be requested when the damage to the environment is correctable or when the individual or company convicted of the offence needs to take measures to avoid future harm.

Type c) and d) orders involve giving notice of the offence. If, for example, a substance was acquired by purchasers or others as a result of the offence and if the identity of these individuals or companies who acquired the substance can be easily determined, an order requiring notice to the individuals or companies that acquired the substance would be requested. However, where the identity of those in receipt of the substance is not easily ascertained, an order requiring public notice in the media would be requested. Type c) and d) orders would also be applicable in the event of an unauthorized release of a toxic substance.

The type e) order directing the offender to perform community service would be requested by enforcement officials when the harm or potential harm affected a community at large.

In the case of recovery of cleanup costs, which would be covered under the type f) order, enforcement officials or the Crown prosecutor or both will first attempt to negotiate recovery of the funds from the offender. Failing such a settlement, enforcement officials, acting on behalf of the Minister, will request an order from the court requiring payment by the offender.

If the court does not grant an order for reimbursement of cleanup costs upon conviction of the offender, the federal government may institute civil proceedings to obtain such compensation.

I. Recovery of Cleanup Costs by the Federal Government by means of a Civil Suit

The *Canadian Environmental Protection Act* allows the Crown to seek recovery, through civil proceedings, of costs incurred:

- when the federal government was required to undertake cleanup, because of the release of a toxic substance to the environment that resulted in danger to the environment, human life or health; or

- when federal officials were obliged to take measures to prevent release of a toxic substance.

In every instance where the court does not grant a request from enforcement officials for an order for reimbursement of such costs upon conviction of an offender, the federal government will seek to recover these monies by the following means.

Enforcement officials will first attempt to negotiate recovery of these costs. Failing an out of court settlement, the Crown may undertake a civil suit to recover expenses for cleanup costs or preventive measures as applicable. Negotiations for recovery of costs and suits will be directed at the person or company that owned the substance or that had the charge, management or control of the substance immediately before its first release into the environment. Unsuspecting third parties will not be liable for the release, but they will be obliged, under the Act, to notify an inspector of the release or, alternatively, to notify another person designated by regulation.

CHAPTER IV

THE CANADIAN ENVIRONMENTAL PROTECTION ACT

1. Key Elements of the Act

2. Context of the Act

1. Key Elements of the Act

The *Canadian Environmental Protection Act* has the following components:

- authority to control the introduction of chemical substances new to Canada into Canadian commerce;

- authority to obtain information on and to require testing of both new substances and substances already existing in Canadian commerce;

- provisions allowing control of all aspects of the life cycle of toxic chemicals from development, through manufacture or importation, transport, distribution, storage and use, their release to the environment as emissions at various phases of the life cycle, and their ultimate disposal as waste;

- provisions for regulations governing federal works and for regulations to protect federal lands and waters, where existing legislation administered by federal departments or agencies does not provide for making regulations to protect the environment;

- provisions to create guidelines and codes for environmentally sound practices as well as objectives setting desirable levels of environmental quality;

- provisions to control sources of air pollution in Canada, where a violation of an international agreement would result, or where the air pollution affects another country and reciprocal legislation to control the sources of the pollution exists;

- provisions for the control of nutrients, such as phosphates, in water conditioners or cleaning products, including detergents, which can interfere with the use of waters by humans, animals, fish or plants;

- provisions to issue permits to control dumping at sea from ships, barges, aircraft and man-made structures (excluding normal discharges from offshore energy facilities); and

- provisions to allow for effective arrangements to be made with the provincial governments regarding the administration of the Act.

2. Context of the Act

Protection of the environment is a responsibility shared by all levels of government as well as by industry, organized labour and individuals. For this reason, the *Canadian Environmental Protection Act* gives the Minister of Environment the authority to conclude, with the approval of the Governor in Council (federal Cabinet), agreements with the provincial and territorial governments with respect to administration of the Act.

The Minister of National Health and Welfare has responsibility under the Act to provide advice in relation to human health aspects and to jointly recommend regulatory actions. Among the subjects on which the Minister of National Health and Welfare may give advice are the toxicity of substances, the ability of the substance to become incorporated into and to accumulate in human tissue, and the ability of the substance to cause biological change.

Appendix 1

THE CITIZENS' CODE OF REGULATORY FAIRNESS

Issued by the Government of Canada, March 1986

When a government regulates, it limits the freedom of the individual. In a democratic country, it follows that the citizen should have a full opportunity to be informed about and participate in regulatory decisions. Moreover, the citizen is entitled to know the government's explicit policy and criteria for exercising regulatory power in order to have a basis for "regulating the regulators" and judging the regulatory performance of the government.

In recognition of these important principles, the federal government has developed this Citizens' Code of Regulatory Principles. It is based on the government's fundamental commitment to openness, fairness, efficiency and accountability.

(1) Canadians are entitled to expect that the government's regulation will be characterized by minimum interference with individual freedom consistent with the protection of community interests.

(2) The government will encourage and facilitate a full opportunity for consultation and participation by Canadians in the federal regulatory process.

(3) The government will provide Canadians with adequate early notice of possible regulatory initiatives.

(4) The government will take measures to ensure greater efficiency and promptness in discretionary and adjudicative regulatory decision-making.

(5) Once regulatory requirements have been established in law, the government will communicate to Canadians, in clear language, what the regulatory requirements are, and why they have been adopted.

(6) The rules, sanctions, processes, and actions of regulatory authorities will be securely founded in law.

(7) The government will ensure that officials responsible for developing, implementing or enforcing regulations are held accountable for their advice and actions.

(8) The government will take all possible measures to ensure that businesses of different size are not burdened disproportionately by the imposition of regulatory requirements.

(9) The government will ensure that the governments of the provinces and territories are given early notice of and an adequate opportunity to consult on federal regulatory initiatives affecting their interests.

(10) The government will not use regulation unless it has clear evidence that a problem exists, that government intervention is justified and that regulation is the best alternative open to the government.

(11) The government will ensure that the benefits of regulation exceed the costs and will give particularly careful consideration to all new regulation that could impede economic growth or job creation.

(12) The government will avoid introducing regulations that control supply, price, entry, and exit in competitive markets except when overriding national interests are at stake.

(13) The sanctions and enforcement powers specified in federal regulatory legislation will be proportionate and appropriate to the seriousness of the violation.

(14) The government will enhance the predictability of the exercise of discretionary powers by federal regulatory authorities and ensure to the maximum extent possible inter-regional consistency in the administration of regulations.

(15) The government will encourage the public to exercise its duty to criticize ineffective or inefficient regulatory initiatives and to offer suggestions for better or "smarter" ways of solving problems and achieving the government's social and economic objectives.